

# *United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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NEW ORLEANS, LA 70130

August 22, 2024

#1314  
Mr. Justin McPhail  
Grenada County Detention Center  
37 Doak Street  
Zone 3000  
Grenada, MS 38901-0000

No. 24-60430      In re: Justin McPhail  
USDC No. 3:23-CV-385

Dear Mr. McPhail,

The district court transferred your second or successive 28 U.S.C. § 2254 motion to this court to determine whether to allow your successive action. I advise you of the following matters, see *In re Tony Epps*, 127 F.3d 364 (5th Cir. 1997).

Under 28 U.S.C. § 2244(b)(3) you must first receive this court's permission before you can file such an action in district court.

You have **30 days** from the date of this letter to file with this court a motion for authorization to proceed in the district court, and to send the documentation below. The motion may not exceed 30 pages pursuant to Fed. R. App. P. 32(a)(7). Please use the case number shown above in your motion. If you fail to file a motion for authorization within this 30 day period, or properly request an extension of time, the clerk will enter an order dismissing your case without further notice.

If you wish to file a second or successive § 2254 petition in the district court, you must make a prima facie showing that you satisfy either of the two conditions found in 28 U.S.C. § 2244(b)(2):

- A. that your claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; **or**,
- B. the factual predicate for your claim could not have been discovered previously through the exercise of due diligence, **and** the facts underlying your claim, if proven by clear and convincing evidence, would be sufficient to establish that a reasonable trier of fact would not have found you guilty of the underlying offense.

You must attach the following documentation to your § 2254 motion to this court:

1. a copy of the proposed § 2254 petition you are requesting permission to file in the district court;
2. copies of all previous § 2254 petitions challenging the judgment or sentence received in any conviction for which you are currently incarcerated; all previous § 2241 petitions challenging the terms and conditions of your imprisonment;
3. any complaint, regardless of title, that was subsequently treated by the district court as a § 2254 motion or § 2241 petition;
4. all court opinions and orders disposing of the claims advanced in (2) above; and
5. all magistrate judge's reports and recommendations issued in connection with the claims advanced in (2), above.

**Do not** submit state court filings. This court does not require and will not address documents filed in a state court.

If, after due diligence and through no fault of your own, you cannot obtain the documents described above, you should submit an affidavit describing the steps you took to obtain them and explaining why you were unsuccessful. If possible, you should also identify by court, case name and case number any proceeding for which you cannot obtain the documents in (2) and (3) above.

The 30 day time limit within which this court must address your § 2254 motion will not begin to run until the clerk's office receives your response to this letter.

The original and one copy of the application must be mailed to:

U.S. Court of Appeals for the Fifth Circuit  
Office of the Clerk  
600 S. Maestri Place  
New Orleans, LA 70130

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Monica R. Washington, Deputy Clerk  
504-310-7705

cc: Mr. David Crews